



**State of New Jersey**  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**PHILIP D. MURPHY**  
*Governor*

**LT. GOVERNOR SHEILA Y. OLIVER**  
*Commissioner*

**FINAL DECISION**

**February 26, 2019 Government Records Council Meeting**

Daran Haber, M.D.  
Complainant

Complaint No. 2017-122

v.

Rutgers University  
Custodian of Record

At the February 26, 2019 public meeting, the Government Records Council (“Council”) considered the February 19, 2019 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the requested “Institutional Animal Care and Use Committee” protocols and accompanying photographs and videos are exempt from disclosure as research conducted under the auspices of a public higher education institution in New Jersey. N.J.S.A. 47:1A-1.1. The original Custodian has thus borne his burden of proof that the denial of access was lawful. N.J.S.A. 47:1A-6. Finally, the GRC declines to address whether the security exemption applies to the requested photographs and videos because same are determined to be exempt under the academic research exemption.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 26<sup>th</sup> Day of February, 2019

Robin Berg Tabakin, Esq., Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: March 1, 2019**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
February 26, 2019 Council Meeting**

**Daran Haber, M.D.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2017-122**

v.

**Rutgers University<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies of the following for a time period of June 1, 2013 to present:

1. All “Institutional Animal Care and Use Committee” (“IACUC”) protocols, and protocol reviews related to the use of dogs.
2. All IACUC protocols and protocol reviews related to the use of live animals for training of emergency medicine residents affiliated with “NJMS” or from any other institution.
3. Photographs and/or video related to the use of animals as described in request item Nos. 1 and 2.

**Custodian of Record:** Casey Woods<sup>3</sup>  
**Request Received by Custodian:** April 17, 2017  
**Response Made by Custodian:** April 21, 2017  
**GRC Complaint Received:** May 24, 2017

**Background<sup>4</sup>**

**Request and Response:**

On April 17, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 21, 2017, the Custodian responded in writing denying access to the Complainant’s OPRA request. The Custodian first stated that responsive records were exempt as “pedagogical, scholarly and/or academic research” records. N.J.S.A. 47:1A-1.1. The Custodian further argued that the responsive records contained “emergency or security information or procedures” the disclosure of which would “jeopardize security of the building or facility or persons therein.” Id.

---

<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Elizabeth Minott, Esq. (New Brunswick, NJ).

<sup>3</sup> The original Custodian of Record was Daniel Faltas.

<sup>4</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Council Staff the submissions necessary and relevant for the adjudication of this complaint.

### Denial of Access Complaint:

On May 24, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant contended that he was unlawfully denied access to the responsive records. The Complainant provided no additional arguments relating to the denial of access.

### Statement of Information:

On June 22, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the original Custodian received the Complainant’s OPRA request on April 17, 2017. The Custodian certified that the original Custodian responded in writing on April 21, 2017 denying access to multiple records under N.J.S.A. 47:1A-1.1.

The Custodian argued that the requested records were explicitly exempt from disclosure under the research records exemption. The Custodian noted that per this exemption, Rutgers was only required to disclose information regarding funding for the research. The Custodian asserted that the exemption existed to provide State higher education institutions freedom to teach ideas that may be controversial. The Custodian further argued that the photographs and videos responsive to request item No. 3 are exempt as research, but also for security concerns. N.J.S.A. 47:1A-1.1. The Custodian argued that it would be impossible to redact the records without revealing information that could be used to threaten building security or persons appearing therein.

## Analysis

### Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

OPRA exempts access to:

Pedagogical, scholarly and/or academic research records and/or the specific details of any research project conducted under the auspices of a public higher education institution in New Jersey, including, but not limited to research, development information, testing procedures, or information regarding test participants, related to the development or testing of any pharmaceutical or pharmaceutical delivery system, except that a custodian may not deny inspection of a government record or part thereof that gives the name, title, expenditures, source and amounts of funding and date when the final project summary of any research will be available.

[N.J.S.A. 47:1A-1.1.]

In Stevens v. Rutgers Univ., GRC Complaint No. 2016-249 (June 2018), the complainant sought records concerning a World Trade Center project conducted by the Environmental and Occupational Health Sciences Institute (“Institute”). The custodian denied access under the academic research exemption. In considering whether the exemption applied, the Council stated that:

In order for the academic research exemption to apply, the request must seek “pedagogical, scholarly, or academic research” conducted “under the auspices of a public higher education institution in New Jersey . . .” N.J.S.A. 47:1A-1.1. Thus, the GRC must establish whether the information sought consisted of research conducted by an individual under the auspices of a public higher education institution in New Jersey.

[Id. at 3.]

The Council thus conducted a step-by-step analysis as follows. First, the Council looked to whether the project in question was considered “research,” finding that the presiding professor was conducting research for the Institute when collecting World Trade Center samples. Next, the Council addressed whether Rutgers constituted a “public higher education institute,” which it found to be true. Based on this analysis, the Council held that the custodian lawfully denied access to the responsive records.

Here, the Complainant’s OPRA request sought IACUC protocols, as well as photographs and videos. The original Custodian denied the request under N.J.S.A. 47:1A-1.1; this complaint followed. In the SOI, the Custodian argued that he properly denied the subject OPRA request because the records were explicitly exempt under the research exemption. The GRC will apply its analysis in Stevens, GRC No. 2016-249 to determine whether the original Custodian lawfully denied access to the responsive records under the academic research exemption.

Regarding the “research” portion of the exemption, the IACUC “serves a vital function in the *research* and teaching conducted at [Rutgers] by ensuring all *research programs* . . . meet the highest standards . . .” (emphasis added).<sup>5</sup> Protocols are electronically stored in what appears to be an internet-based system called “eIACUC” and require either a Rutgers account or guest account, which can only be requested by a Rutgers faculty or staff member.<sup>6</sup> Thus, there is a strong indication that the responsive protocols and accompanying pictures/videos for laboratory animals are protected and shared within the research community engaging in testing with laboratory animals. Thus, one can logically conclude that the requested records are considered “academic research” falling within the perimeters of the academic research exemption. N.J.S.A. 47:1A-1.1.

Regarding the “public higher education institution” question, Rutgers’ authority to operate as a New Jersey university is codified at N.J.S.A. 18A:65-2. See also N.J.S.A. 18A:64M-2(c). Thus, it is clear that Rutgers falls within the definition of a “public higher education institution.”

---

<sup>5</sup> <https://orra.rutgers.edu/iacuc> (accessed February 5, 2019).

<sup>6</sup> <https://orra.rutgers.edu/iacucfaq> (accessed February 6, 2019).

In applying the forgoing to the facts of this complaint, the GRC is satisfied that the original Custodian lawfully denied access to the requested IACUC protocols and accompanying photographs and videos. The IACUC's protocols and accompanying materials clearly fall within the definition of "research . . . under the auspices of a public higher education institution in New Jersey." Thus, the information sought falls squarely within the higher education research exemption under N.J.S.A. 47:1A-1.1.

Accordingly, the requested IACUC protocols and accompanying photographs and videos are exempt from disclosure as research conducted under the auspices of a public higher education institution in New Jersey. N.J.S.A. 47:1A-1.1. The original Custodian has thus borne his burden of proof that the denial of access was lawful. N.J.S.A. 47:1A-6. Finally, the GRC declines to address whether the security exemption applies to the requested photographs and videos because same are determined to be exempt under the academic research exemption.

### **Conclusions and Recommendations**

The Council Staff respectfully recommends the Council find that the requested "Institutional Animal Care and Use Committee" protocols and accompanying photographs and videos are exempt from disclosure as research conducted under the auspices of a public higher education institution in New Jersey. N.J.S.A. 47:1A-1.1. The original Custodian has thus borne his burden of proof that the denial of access was lawful. N.J.S.A. 47:1A-6. Finally, the GRC declines to address whether the security exemption applies to the requested photographs and videos because same are determined to be exempt under the academic research exemption.

Prepared By: Frank F. Caruso  
Acting Executive Director

February 19, 2019